

MDL EXHIBIT 8

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 IN AND FOR THE COUNTY OF MARICOPA

ROBERT J. SWANSTON, individually and on)	CV2002-004988
behalf of himself and all others similarly situated,)	
)	
Plaintiff,)	
)	
vs.)	MOTION TO DISMISS WITHOUT
)	PREJUDICE CERTAIN CLAIMS
TAP PHARMACEUTICAL PRODUCTS, INC.;)	AND DEFENDANTS
et al.,)	
)	
Defendants.)	(Assigned to the Honorable Janet E.
)	Barton)

Plaintiff, by and through his counsel, The Haviland Law Firm, LLC and Jennings, Haug & Cunningham, hereby moves pursuant to Rule 41(a) of the Arizona Rules of Civil Procedure for an Order dismissing without prejudice certain Defendants, and claims against certain other Defendants to the extent such claims overlap with those being adjudicated in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, CA No. 01-12257-PBS, MDL No. 1456 (D. Mass.) ("MDL 1456"), and in support thereof avers as follows:

- The following Defendants in this case are also Defendants in MDL 1456: Abbott Laboratories; Amgen Inc.; Zeneca, Inc.; AstraZeneca Pharmaceuticals L.P.;

1 Aventis Pharmaceuticals Inc.; Hoechst Marion Roussel, Inc.; ZLB Behring,
 2 L.L.C. (f/k/a Aventis Behring L.L.C.); Baxter International Inc.; Baxter
 3 Healthcare Corporation; Bayer Corporation; Bristol-Myers Squibb Co.; Oncology
 4 Therapeutics Network Corp.; Apothecon, Inc.; Dey, Inc.; Fujisawa Healthcare,
 5 Inc.; Fujisawa USA, Inc.; Immunex Corporation; Johnson & Johnson; Centocor,
 6 Inc.; Ortho Biotech Products, L.P.; Pharmacia Corporation; Pharmacia & Upjohn
 7 LLC, f/k/a Pharmacia & Upjohn, Inc.; Monsanto Company; Schering-Plough
 8 Corporation; Warrick Pharmaceuticals Corporation; Sicor, Inc.; Gensia, Inc., and
 9 Gensia Sicor Pharmaceuticals, Inc. (hereinafter "Overlapping Defendants").

10 2. For the reasons the follow, Plaintiffs respectfully submit that it is appropriate for
 11 them to dismiss without prejudice their claims against these Defendants at this
 12 juncture to the extent they overlap with those in MDL 1456 to avoid any potential
 13 overlap between this case and MDL 1456 as this case moves forward.

14 3. The following Defendants in this case are not Defendants in MDL 1456: Ethicon
 15 Endo-Surgery, Indigo Medical Inc., Christopher Coleman, Michael T.
 16 Gendelman, Eddy James Hack, Scott Hidalgo, and David Jett ("Non-Overlapping
 17 Defendants"). Plaintiffs respectfully submit that it is appropriate for them to
 18 dismiss without prejudice their claims against these Defendants in their entirety.

19 4. As this Court is aware, the Court in MDL 1456 has certified several Classes of
 20 consumer plaintiffs who have claims against certain Overlapping Defendants for
 21 some of the same drugs as are at issue in this case. The MDL Court also has
 22 pending before it a Motion for Class Certification involving consumer claims
 23 against certain other Overlapping Defendants, the outcome of which Motion may
 24 not be known for months.

25 5. In view of the class certification decisions by the Court in MDL 1456, Plaintiffs
 26 would like to move forward with class certification in this case, and the ultimate

1 prosecution of the merits of their claims. However, in order to do so in a manner
2 that does not cause there to be any question as to this Court's jurisdiction over
3 Plaintiffs' claims here, the undersigned counsel for Plaintiffs believe that it would
4 be prudent for this Court to dismiss without prejudice the Plaintiffs' claims for
5 drugs that overlap with those being asserted by plaintiffs in MDL 1456.

6 6. However, because no one can predict the outcome of the MDL Court's pending
7 class certification decisions, Plaintiffs also believe that certain protections should
8 be afforded to the parties in the event that it becomes necessary to reinstate one or
9 more of those claims in this case at some future date. Such protections would
10 serve to protect the interests of all parties by ensuring that neither the claims nor
11 defenses thereto are compromised unfairly in the event reinstatement becomes
12 necessary.

13 7. Accordingly, Plaintiffs propose that the Court's Order of dismissal should include
14 the following protections: (1) that defendants are not deemed to have waived or
15 released any defenses or arguments, including but not limited to, any statute of
16 limitations and/or repose defenses, which could have been asserted prior to the
17 effective date of the Order granting dismissal, (2) that any and all applicable
18 statute of limitations and/or repose should be, from the effective date of the Order
19 granting dismissal and for the pendency of MDL 1456, tolled, and (3) that the
20 reinstatement of any claim against a Defendant in this action should not trigger a
21 right of removal to federal court.

22 8. Should the Court find that dismissal without prejudice of these overlapping claims
23 is appropriate under the circumstances, Plaintiffs would prepare and present to the
24 Court, within fourteen (14) days of the entry of its Order of dismissal, a listing of
25 the drugs of the above-listed Defendants that are at issue in MDL 1456, the claims
26 for which drugs Plaintiffs hereby agree to dismiss without prejudice from this

1 case. Plaintiffs respectfully submit that such list should be appended to the
2 Court's dismissal Order to make clear on the record the extent to which Plaintiffs'
3 claims are dismissed without prejudice.

4 WHEREFORE, for the foregoing reasons, Plaintiffs hereby request that this Honorable
5 Court enter an Order of Dismissal in the form attached hereto.

6 RESPECTFULLY SUBMITTED this 10th day of December, 2007.

7
8 By /s/ Donald E. Haviland, Jr.
Donald E. Haviland, Jr.

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18 **Counsel for Plaintiffs and the Class**
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CERTIFICATE OF MAILING

I hereby certify that the foregoing MOTION TO DISMISS WITHOUT PREJUDICE
CERTAIN CLAIMS AND DEFENDANTS served this date, December 10th 2007
on all parties, via Lexis/Nexis.

s/K. Cecil
3778-0